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In the Supreme Court
OF THE
United States

OCTOBER TERM 1973

No. 73-1365

PALO ALTO TENANTS UNION and
TERRY KARL, *Petitioners,*

vs.

PALO ALTO CITY MANAGER, CHIEF OF POLICE, and
CHIEF BUILDING INSPECTOR, *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

The respondents, Palo Alto City Manager, Chief of Police, and Chief Building Inspector, respectfully pray that a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Ninth Circuit, entered on November 13, 1973, be denied.

OPINIONS BELOW

The opinion and judgment of the Court of Appeals is reported at 487 F.2d 883 (9th Cir. 1973), and is set forth in full as Appendix A to petitioners' petition on file herein. The memorandum opinion and order of the United States District Court for the Northern District of California is reported at 321 F.Supp. 908 (N.D. Cal. 1970), and is set forth in full as Appendix B to petitioners' petition on file herein.

QUESTION PRESENTED

Whether Palo Alto's definition of a family as including persons related by blood, marriage, or legal adoption, and, as an equivalent thereto, up to four persons not so related, for purposes of application of the City of Palo Alto's zoning ordinance, meets constitutional standards of due process and equal protection as contained in the Fourteenth Amendment of the United States Constitution?

STATUTES INVOLVED

The legislation involved herein is Palo Alto Municipal Code Sections 18.04.160, 18.04.210, 18.12.020, and 18.88.050, which are set forth in Appendix C to petitioners' petition of file herein.

STATEMENT OF THE CASE

Petitioners, alleging sufficient capacity to give them standing, filed an action in the United States District

Court for the Northern District of California alleging that Palo Alto's definition of a family, which included an equivalent of up to four persons not related by blood, marriage or legal adoption, for purposes of determining a permissible number of occupants of single-family residences in the City, was unconstitutional on a number of grounds, principally violations of equal protection and due process under the Fourteenth Amendment of the United States Constitution.

The District Court, the Honorable Albert C. Wollenberg presiding, denied all relief requested and declared that the definition of a family and its unrelated person equivalent for purposes of applicability in single-family residence zones in the City of Palo Alto met all constitutional standards.

The case is reported at 321 F.Supp. 908. The principal holding of Judge Wollenberg may be summarized as follows:

1. The test to be applied to an ordinance of this type is the rational basis or "police power" test and not the compelling interest test as urged by petitioners.
2. Under the test applied, the ordinance in question bears a rational relationship to the governmental purposes of controlling population density, noise, traffic, parking, maintenance of the rent structure, and preservation of single-family neighborhoods from intrusion of other types of dwelling units.
3. An influx of individuals able to pay collectively far higher rents than a traditional family can

afford would have an adverse upward effect upon traditional families and would tend to create a windfall for landlords.

4. The traditional family has biological and legal ties which differ considerably from those applicable to non-related persons, and thus the State may legislate toward them differently than toward non-related persons.
5. No racial, religious or political discrimination was shown. No right of free association was infringed.

The United States Court of Appeals for the Ninth Circuit affirmed, 487 F.2d 883, distinguishing Palo Alto's more liberal ordinance from the restrictive one found defective by the Second Circuit in *Boraas v. Village of Belle Terre,* 476 F.2d 806. The Court noted that Palo Alto's ordinance, by actually allowing four unrelated persons to occupy a dwelling unit, exceeded the average size of traditional families in Palo Alto (3.75 persons) and thus the constitutional infirmity present in the Belle Terre ordinance was not pr nt.

The instant petition for a writ of certiorari followed, and during its pendency before this Court but prior to submission of respondent's brief in opposition, this honorable Court reversed the decision of the Court of Appeals for the Second Circuit in the case of *Village of Belle Terre, et al. v. Boraas, et al.,* No. 73-191, April 1, 1974.

REASONS FOR DENYING THE WRIT OF CERTIORARI

1. THE DECISIONS OF THE COURTS BELOW ARE IN FULL ACCORDANCE WITH THE PRINCIPLES ENUNCIATED IN VILLAGE OF BELLE TERRE, ET AL. v. BORAAS, ET AL., APRIL, 1974, NO. 73-191, AND IN FACT THE ORDINANCE INVOLVED HEREIN IS MORE EQUITABLE THAN THAT UPHELD IN THE BORAAS CASE. NO CONFLICT BETWEEN THE CIRCUITS EXISTS IN VIEW OF THIS HONORABLE COURT'S DISPOSITION OF THE VILAGE OF BELLE TERRE v. BORAAS, SUPRA.

Even prior to this honorable Court's decision in *Village of Belle Terre v. Boraas,* April 1, 1974, No. 73-191, insufficient grounds for granting the requested writ of certiorari existed. In the first place, the United States Court of Appeals for the Ninth Circuit clearly found that the ordinance in force in the City of Palo Alto was so closely akin in its allowance of four unrelated persons as an equivalent of a family that it did not possess the constitutional infirmity found defective in *Boraas v. Village of Belle Terre,* 476 F.2d 806 (2d Cir. 1973).

This honorable Court's decision in *Village of Belle Terre v. Boraas, supra,* dispelled all doubt and, in addition, effectively disposed of any claim that there was a conflict between the decisions of the Second Circuit and Ninth Circuit regarding occupancy limitation by way of definitions of a family.

The Court will recall that it upheld a definition of a family very closely similar to Palo Alto's in *Village of Belle Terre v. Boraas, supra,* except that in that case the equivalent of unrelated persons was set at two, while in Palo Alto it is set as four, which actually exceeds the average number of persons occupying a residential dwelling unit.

The Honorable Justice William O. Douglas, writing for the majority of the Court, rejected the various alleged infirmities of the ordinance in the *Village of Belle Terre* by noting:

> "It is not aimed at transients. Cf. *Shapiro v. Thompson,* 394 U.S. 618. It involves no procedural disparity inflicted on some but not on others such as was presented by *Griffin v. Illinois,* 351 U.S. 12. It involves no 'fundamental' right guaranteed by the Constitution, such as voting, *Harper v. Virginia Board,* 383 U.S. 663; the right of association, *NAACP v. Alabama,* 357 U.S. 449; the right of access to the courts, *NAACP v. Button,* 371 U.S. 415; or any rights of privacy, cf. *Griswold v. Connecticut,* 381 U.S. 479; *Eisenstadt v. Baird,* 405 U.S. 438, 453-454. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' (quoting *Royster Guano Co. v. Virginia,* 253 U.S. 412, 415) and bears 'a rational relationship to a [permissible] state objective.' *Reed v. Reed,* 404 U.S. 71, 76."

Later, Justice Douglas stated:

> "The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.
>
> "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible one within

Berman v. Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people."

Little more need be said by respondents. If an ordinance creating an equivalent of a family of two persons not related by blood, marriage or legal adoption is constitutionally permissible as found in *Village of Belle Terre v. Boraas, supra,* then surely an ordinance allowing twice as many persons not so related is clearly beyond reasonable dispute as to its validity.

The only other case cited by petitioners in support of their petition is the State case of *City of Des Plaines v. Trottner,* 34 Ill.2d 432, 216 N.E.2d 116 (1966). This case is clearly inapplicable to the facts in the instant case, inasmuch as the validity of the ordinance there involved was determined by the nonexistence of a state enabling statute. This issue has not been raised with regard to Palo Alto's ordinance and, indeed, it could not, as the California authority to enact such an ordinance (subject to constitutional standards) is beyond dispute. If Illinois authority on the issue on this case is of interest, the Court is respectfully referred to the case of *Drueck v. Peterson* (1950) 340 Ill.App. 164, 91 N.E.2d 124, in which a cooperative living group, nearly all of whom were unmarried, were found by the Illinois court not to be a family residence use and thus not permitted to occupy a single-family residence.

2. THE COURT'S DECISION IN VILLAGE OF BELLE TERRE v. BORAAS EFFECTIVELY DISPOSES OF PETITIONERS' CONTENTION THAT THE IMPORTANT POINTS HEREIN HAVE NOT BEEN DECIDED BY THE UNITED STATES SUPREME COURT.

As the second rationale supporting petitioners' request for a writ of certiorari, the claim is made that this honorable Court has not decided an issue of importance in many areas of the United States. This contention has now, of course, become moot in view of this honorable Court's decision in *Village of Belle Terre v. Boraas, supra,* and need not be discussed herein.

CONCLUSION

Since *Village of Belle Terre v. Boraas* was decided on April 1, 1974, and involves issues so closely akin herein, but nevertheless upheld an ordinance more restrictive than that of Palo Alto's, it is clear that the writ of certiorari requested in this case prior to the rendering of the decision in *Village of Belle Terre v. Boraas, supra,* should be denied. Respondents respectfully so urge.

Dated, Palo Alto, California,
April 26, 1974.

Respectfully submitted,
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